IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.1401 OF 2005

WITH

CIVIL APPLICATION NO.1965 OF 2005

Babtis Shavir Kuraiya @ Kurte. ...Appellant.

Vs.

Shri Harishchandra Balkrishna & Ors...Respondents.

...

Mr.C.N.Chavan for the Appellant.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

December 2, 2005.

P.C. :

Both the Courts below have come to the conclusion that the agreement to sell (Exh.63) dated 17th January 1989 was duly proved. The contention of the Appellant was that this was not an agreement to sell, but a loan transaction. However, this submission was found to be belied by the bond which the Appellant executed on 26th April 1989 (Exh.65) three months after the agreement to sell and by the application that was made by the

Appellant on 29th December 1989 (Exh.66) to the Collector for permission to sell the property. The concurrent findings in this case do not warrant any interference.

In so far as the aspect of limitation is concerned, it was on 15th November 1992 that the appellant stated before the Circle Officer that he did not desire to go ahead with the sale in favour of the original Plaintiff and thereafter, within a period of six months made a statement on 16th June 1993 that he wished to sell the land to Defendant No.5 (which was for a higher consideration). The suit was instituted on 10th November 1993 which was one year after the Appellant declined to perform the agreement. The suit was within limitation.

This appeal is filed only by the original First Defendant. In so far the Appellant (the First Defendant) is concerned, no case for interference has been made out. No substantial question of law is raised. The appeal is dismissed.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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